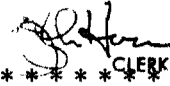


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED

Jul 23 2014


CLERK

JOHN R. CHRISTIAN,	*	CIV 14-4020
	*	
Petitioner,	*	
	*	
vs.	*	ORDER
	*	
J. S. WILLIS, Warden,	*	
	*	
Respondent.	*	
	*	

Petitioner brings this *pro se* petition pursuant to 28 U.S.C. § 2241. Also pending before the Court is Petitioner's Motion to Seal Document, Doc. 11. The Motion to Seal, Doc. 11, is denied as is the clarification Reply (Doc. 11-1) as no basis has been shown for the requested sealing.

The Magistrate Judge issued a Report and Recommendation recommending that the Petition be denied with prejudice. Petitioner timely objected to the Report and Recommendation.

The United States District Court for the Western District of Missouri has twice denied Petitioner's request to amend the Presentence Report (PSR) so that as amended it would better support Petitioner's desire to enter the RDAP program.

Petitioner's Objections to the Report and Recommendation consist largely of a statement of the evidence as to why the PSR was wrong regarding some of Petitioner's recent drug use along with arguing other indications of RDAP qualifying drug use. Petitioner attached to his Objections to the Report and Recommendation portions of what was apparently a 47 page Presentence Report. Those portions show significant drug use as well as treatment from an early age. Unfortunately for Petitioner, the timing of the drug use shown in the PSR does not support RDAP entry under Bureau of Prisons regulations.

It is normal for sentencing purposes for a Defendant to want to make the best showing possible. Such a showing can be contrary to what is later necessary to qualify for RDAP and its accompanying benefits.

This Court recognizes that 18 U.S.C. § 3625 precludes judicial review of individual RDAP program entry determinations, *Reeb v. Thomas*, 636 F.3d 1224, 1227 (9th Cir. 2011) unless there is a violation of established federal law or a violation of the Constitution. There is no violation of federal law as the Bureau of Prisons in making this individual determination did not exceed its statutory authority nor did it otherwise violate federal law or the Constitution.

It is this Court's conclusion that had Petitioner objected to the PSR in a timely fashion pursuant to FED.R.CRIM.P. 32, this Court as the Court of confinement could consider the request to correct the PSR. No timely objection was made. If timely objection had been made to the PSR, and if this Court did make corrections to the PSR, then the Bureau of Prisons could consider the PSR as corrected and determine whether or not all the information before it warranted entry into RDAP. This Court does not make any determination as to what its ruling on PSR correction would be if timely objection had been made to the PSR. Accordingly,

IT IS ORDERED:

1. That the Petitioner's Objections to the Magistrate Judge's Report and Recommendation, Doc. 15, are overruled and the Presentence Report (PSR) is adopted in full by the Court.
2. That the Report and Recommendation, Doc. 12, is ADOPTED.
3. That Petitioner's Motion to Seal Document, Doc. 11, is DENIED.
4. That Petitioner's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, Doc. 1, is DENIED with prejudice.
5. That no Certificate of Appealability shall issue.

Dated this 23rd day of July, 2014.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 
DEPUTY